RECENT IMPORTANT DECISIONS

ADJOINING LANDOWNERS—LATERAL SUPPORT.—Defendant was sued for injuries to plaintiff's dwelling on an adjoining lot caused by defendant's having excavated on his lot after having given plaintiff notice of the intended excavation. *Held,* defendant, after having given plaintiff reasonable notice of the intended excavation, was not liable for injuries to plaintiff's building which resulted from defendant's "ordinarily careful excavation of his own lot." *Vandegrift, et al.* v. *Boward* (Md. 1916), 98 Atl. 528.

In the absence of statute it is well settled that a landowner who in excavating on his land injures a building on adjoining land is liable only if the injury has resulted from his negligence. *Pullan* v. *Stallman,* 76 N. J. L. 10, 56 Atl. 116; *Simon* v. *Nance,* 45 Tex. Civ. App. 480, 100 S. W. 1038. What a landowner intending to excavate on his land need do to protect himself from liability may not always be readily determined. The Maryland Supreme Court has held: (1), that notice of the proposed excavation is necessary, and that, after having given notice, the excavator must exercise "due care and skill, at his peril, to prevent injury to the adjoining landowner." *Shafer* v. *Wilson,* 44 Md. 268; (2), that failure to give notice is not necessarily fatal, and if notice is given there is no liability if the excavation is made with reasonable and ordinary care. *Bonaparte* v. *Wiseman,* 89 Md. 12, 42 Atl. 918, 44 L. R. A. 482; (3), that if notice has been given there is liability only for "actual and positive negligence in the manner of doing the work," and the excavator need not use "the same care that a prudent man would exercise in similar circumstances." *Serio* v. *Murphy, et al,* 99 Md. 545, 58 Atl. 435, 105 Am. St. Rep. 316; and (4), that the duty of a landowner whose property is liable to be injured, after having been notified, is merely to protect his property against an inevitable injury which might otherwise result from the most careful performance of the excavation. *Hanrahan* v. *Baltimore City,* 114 Md. 517, 80 Atl. 312. It would seem a task of no little difficulty to reconcile all of these pronouncements. A late Michigan case has made "reasonable precautions" necessary, the jury to determine what was reasonable. *Bissell* v. *Ford,* 176 Mich. 64, quoting *Gildersleeve* v. *Hammond,* 109 Mich. 431, 67 N. W. 519, 33 L. R. A. 46. A North Carolina case makes notice of the extent of the excavation necessary. *Davis* v. *Summerfield,* 131 N. C. 352.

BANKRUPTCY—SUSPENSION OF STATE LAWS.—A farmer appealed from an order declaring him insolvent and appointing a trustee to manage and dispose of his estate as provided by the state insolvency law. *Held,* that Congress by expressly exempting farmers from involuntary bankruptcy (§ 4b), to the extent of that exemption intended not to suspend the state insolvency laws. *Pitcher* v. *Standish,* (Conn. 1916), 98 Atl. 93.

There is no doubt that to the extent the state and national acts cover the same field the former is suspended. *Ketchum* v. *McNamara,* 72 Conn. 709,

711, 46 Atl. 146, 50 L. R. A. 641; *Sturgis* v. *Crowninshield*, 4 Wheat. 122; *Harbaugh* v. *Costello*, 184 Ill. 110, 113, 56 N. E. 363, 75 Am. St. Rep. 147. But the decisions are in hopeless conflict as to the effect of excepting farmers from the operation of § 4b of the Bankruptcy Act, some holding that Congress intended to cover the whole field of his insolvent condition; *Parmalee Mfg. Co.* v. *Hamilton*, 172 Mass. 178, 180, 51 N. E. 529 (dictum); *Littlefield* v. *Gay*, 96 Me. 422, 52 Atl. 925; *In re Weedman Stave Co.*, 199 Fed. 948, 29 A. B. R. 460, others that its intention was "to leave the matter untouched, and therefore subject to the regulation of the states." *Old Town Bank* v. *McCormick*, 96 Md. 341, 352, 53 Atl. 934, 60 L. R. A. 577, 94 Am. St. Rep. 577; *Lace* v. *Smith*, 34 R. I. 1, 12, 82 Atl. 268, Ann. Cas. 1913, E. 945. The latter view, adopted in the instant case, is the weight of authority, following the statement of Justice MARSHALL in *Sturgis* v. *Crowninshield*, 4 Wheat. 122, that it is not the existence but the exercise of the power to establish a genuine bankruptcy law in conflict with state laws, which renders the latter inoperative. The courts agree that the express exclusion of all corporations but "manufacturing, trading, printing, etc.," from the operation of both § § 4a and 4b of the National Act does not as to them suspend the state laws. *Herron Co.* v. *Superior Court*, 136 Cal. 279, 282, 68 Pac. 814; *Dille* v. *People*, 118 Ill. App. 426. Hence as to this class Congress is said to have exercised its power. The court argues from this premise that Congress had no different intention as to farmers when providing that they could become voluntary bankrupts. The answer that "Congress intended to create a complete system of bankruptcy, and when it made certain exceptions it did so because it seemed wise that in such cases bankruptcy should not be permitted at all" (29 HARV. L. REV. 776) is too broad, if the decisions are correct as to the effect of expressly excepting certain classes of corporations from the operation of § 4. See generally 11 MICH. L. REV. 60; 22 HARV. L. REV. 776; REMINGTON, § § 1629-30.

BANKRUPTCY—WHEN IS RECORDING REQUIRED.—A mortgage given more than four months before bankruptcy was recorded within four months prior to the petition. The state statute required recording as against subsequent purchasers and lien creditors. *Held*, it was required to be recorded within the meaning of § 60a of the bankruptcy act so as to be voidable by the trustee under § 60b, all other elements of a voidable preference as defined by § 60a being present at the time of recording. *Bunch* v. *Maloney*, 233 Fed. 967 (C. C. A. 1916).

The District Court in the instant case, 225 Fed. 243, (prior to *Carey* v. *Donohue*, 240 U. S. 430, 36 Sup. Ct. 386), followed the previous rulings of the sixth, seventh and eighth circuits that a trustee may set aside a transfer recorded within the four months' period if recording is required as to anyone. *Carey* v. *Donohue* held that "the trustee could not under § 60b avail himself of a requirement exclusively in the interest of someone outside of the bankruptcy act [subsequent purchasers] and for whom he was not authorized to speak," but Justice HUGHES, in giving the opinion of the court, said that recording is "required" under § 60 if it is required "for the protection of